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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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Administrative Appeals Office
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE: SRC 02 172 50602

Office: TEXAS SERVICE CENTER Date:

MAR 12 2003

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker under Section 101(a)(15)(O)(i) of the Immigration and Nationality Act,
8 U.S.C. § 1101(a)(15)(O)(i)

ON BEHALF OF PETITIONER:

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a publishing company. The beneficiary is a publisher. The petitioner seeks O-1 classification of the beneficiary, under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), as an alien with extraordinary ability in business, in order to employ him in the United States for a period of three years as a publisher at an annual salary of \$95,000.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary is at the very top of his field of endeavor.

On appeal, counsel for the petitioner submits a 28-page brief and additional documentation.

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

The sole issue raised in this proceeding is whether the petitioner has shown that the beneficiary qualifies for classification as an alien with extraordinary ability in business as defined by the statute and the regulations.

8 C.F.R. §214.2(o)(3)(ii) defines, in pertinent part:

Extraordinary ability in the field of science, education, business, or athletics means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.

8 C.F.R. §214.2(o)(3)(iii) states, in pertinent part, that:

Evidentiary criteria for an O-1 alien of extraordinary ability in the fields of science, education, business, or athletics. An alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of:

(A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or

(B) At least three of the following forms of

documentation:

- (1) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
 - (2) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;
 - (3) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;
 - (4) Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;
 - (5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;
 - (6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media;
 - (7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;
 - (8) Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.
- (C) If the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

The beneficiary is a 33-year old citizen of the United Kingdom (U.K.). He attended the Damelin Business College in Johannesburg, South Africa between the years 1986 and 1989. The beneficiary worked as an in-house publisher and project director at Harrington Kilbride, PLC, a publishing company based in London. He worked as

the Executive Vice President and Publisher for Harrington Kilbride (FKA Highbury House Communications) in Atlanta, Georgia and at Sterling Publishing in the United Kingdom as a publisher. The beneficiary established his own publishing house dedicated to producing publications that would drive investment into South Africa in the 1990's.

After reviewing the evidence submitted in support of the petition, the director found that the beneficiary had not demonstrated the type of sustained national or international recognition of his accomplishments necessary for O-1 classification. The director concluded that the record was insufficient to demonstrate that the beneficiary was recognized as one of the small percentage recognized as being at the very top of the field of business pursuant to 8 C.F.R. § 214.2(o)(3)(ii).

On appeal, counsel for the petitioner asserts that the director erred in interpreting the law and in evaluating the evidence.

There is no evidence that the beneficiary has received a major, internationally recognized award equivalent to that listed at 8 C.F.R. § 214.2(o)(3)(iii)(A). Neither is the record persuasive in demonstrating that the beneficiary has met at least three of the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B).

Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

No evidence was provided in relation to criterion number one.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

No evidence was submitted to satisfy criterion number two.

Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation.

No evidence was submitted to satisfy criterion number three.

Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought.

On appeal, the petitioner provided the Bureau with a testimonial written by an editor for Style magazine, based in Johannesburg. She wrote that, "as an eminent publisher, [the beneficiary] has substantial experience judging the work of others, as he has ultimate decision-making control over the works that go into his

publications." Judging the work of others is part of the beneficiary's job as a publisher, and does not reflect any greater degree of acclaim than other publishers enjoy. The petitioner failed to establish that the beneficiary has sustained acclaim by virtue of his work experience judging others.

Evidence of the alien's original scientific, scholarly, or business related contributions of major significance in the field.

The petitioner asserts that the beneficiary has made original contributions of major significance in his field. According to several testimonials provided to the Bureau, the beneficiary started several investment publications that helped steer investments into southern Africa. In the absence of corroborative evidence such as published articles about the beneficiary and his achievements, the record is insufficient to establish this claim.

[REDACTED] wrote that the beneficiary "helped finance and advise a local Atlanta company...in its attempt to win the contract for large format publishing (on giant screens) at the Olympic Games 1996 in Atlanta." The petitioner failed to establish that the beneficiary made an original contribution of major significance by virtue of his work to secure such a contract. The author of another testimonial asserts that the beneficiary launched an internet publication called *Histio.org* that features *Histiocytosis*, a rare infant disease, thereby saving lives. Another wrote that the beneficiary's accomplishments include the following: seven-color printing; compressed flashed based animation for websites; and multi-event publishing for the sport of Polo. The petitioner failed to provide sufficient information to evaluate the significance of these accomplishments. The petitioner provided the Bureau with more than 25 testimonials. One described the beneficiary as "a very creative and ingenious publisher." Another opined that the beneficiary "has created innovative, original publications, such as *Y10K*, which have made a major contribution to the topics they address." While all of the testimonials' authors praise the beneficiary, they do not establish that the beneficiary has made original contributions of major significance relative to the work of others in the field. The remarks are conclusory at best and speak to the success the beneficiary and his publications have enjoyed. Furthermore, the majority of the testimonials' authors have worked with the beneficiary, therefore they are not deemed to be independent appraisals of his work. Some of the authors have worked for the beneficiary. One has invested in the beneficiary's publishing concern. The petitioner failed to demonstrate that the beneficiary satisfies this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media.

No evidence was submitted to satisfy criterion number six.

Evidence that the alien has been employed in a critical or essential capacity for organizations and establishment that have a distinguished reputation.

The petitioner provided the Bureau with testimonials that assert that the beneficiary has been employed in an essential capacity for several organizations that have a distinguished reputation.

██████████ wrote that the beneficiary "played leading and critical roles at such prestigious organizations as Highbury House and Sterling Publishing." A former colleague wrote that the beneficiary was an in-house publisher and project director for

██████████ The founder of ██████████ wrote that the beneficiary was employed as one of his senior staff. A senior staff member does not necessarily perform in a critical or essential capacity. The beneficiary was in charge of a quarterly magazine - *South African Decisions* for Highbury House Communications. Although the evidence indicates that Harrington Kilbride enjoys a distinguished reputation in the United Kingdom, the record fails to show that the beneficiary played a critical role for that organization as would its founder or chief executive officer. The beneficiary was promoted to head a new affiliate office in the United States as a managing director. The petitioner failed to establish that this Atlanta affiliate is a distinguished organization. The petitioner failed to establish that the beneficiary played a critical role at Harrington Kilbride. The evidence is insufficient to establish that the beneficiary satisfies this criterion.

Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services

No evidence was submitted of the beneficiary's salary history. In the absence of relevant salary data, the petitioner failed to establish that the beneficiary's wages are high in comparison to the wages of publishers with similar qualifications.

On appeal, counsel for the petitioner argues that the above criteria do not readily apply to publishers, therefore, the petitioner offers evidence of the commercial success that the beneficiary has enjoyed as evidence that he is an alien of outstanding ability. The petitioner failed to establish that the above criteria do not readily apply to publishers. Nonetheless, the evidence on the record regarding the beneficiary's commercial success has been taken into account as corroborative evidence of the beneficiary's original business-related contributions in the field. It is noted that success is not necessarily an achievement. In the absence of further corroborating evidence such as published articles in the news media or professional journals, the evidence is insufficient to establish that the beneficiary is an alien of extraordinary ability.

The extraordinary ability provisions of this visa classification are intended to be highly restrictive. See 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991). In order to establish eligibility for extraordinary ability, the statute requires evidence of "sustained national or international acclaim" and evidence that the alien's achievements have been recognized in the field of endeavor through "extensive documentation." The petitioner has not established

that the beneficiary's abilities have been so recognized.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.